AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 70 of 2001

Smt. Sumita Voditelwar and others

-Versus-

State of Chhattisgarh and others

Post for order on 3rd January, 2006.

Sd/-
Satish K. Agnihotri
Judge
2.1.2006

(288)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 70 of 2001

Petitioners	1.	Smt. Sumita Voditelwar, W/o Shri Shrinivas Voditelwar, aged about 50 years, Head-Mastar.
	2.	Smt. Usha Pandya, W/o Shri Ashok Pandya, aged about 50 years, Assistant Teacher.
	3.	Ku. Kunti Thakur, D/o Shri G.S. Thakur, aged about 50 years, Assistant Teacher.
	4.	Smt. Sunita Soni, W/o Shri Satyendra Soni, aged about 40 years, Assistant Teacher.
		All posted and employed in Shri Mahavir Jain Vidyalaya Shikshak Nagar, Durg-491 001 (C.G.).
	Versus	
Respondents	1.	State of Chhattisgarh, through :- Secretary Department of Commerce and Industries, Secretariat Raipur (Chhattisgarh)
	2.	Registrar, Firms and Societies Chhattisgarh, Secretariat, Raipur C.G.).
	3.	District Education Officer, Durg (Chhattisgarh)
	4.	Shri Mahavir Jain Vidyalaya Bal Mandir, Shikshak Nagar, Durg Through :- Secretary, Shri Jain Tarun Club, Shikshak Nagar, Durg (Chhattisgarh).
	5.	Shri Jain Tarun Club, Durg Chhattisgarh)(Regd. No. 1218 dated 25/11/1968)Through:- Secretary Shri Jain Tarun Club, Shikshak Nagar, Durg (Chhattisgarh).

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri, J.**

Mr. V. G. Tamaskar, Advocate for the petitioners.

Mr. Pankaj Shrivastava, Panel lawyer for Respondents No. 1 to 3.

Mr. P. Diwakar, Senior Advocate with Shri P. R. Patankar, Advocate for Respondents No. 4 and 5.

289

ORDER

(3rd January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri J.**

1. The present petition has been filed under Article 226 of the Constitution of India on 11.1.2001 seeking following reliefs:-

   (I) that the Hon'ble Court be pleased to issue a writ in the nature of certiorari or mandamus thereby quashing the notice No. 0/2000 dated 31/5/2000 Annexure P 7.

   (II) That the Hon'ble Court be pleased to issue writ and/or direction in the nature of prohibition, prohibiting the respondents and each of them from giving effect and/or further effect, till disposal of this petition.

   (III) That the Hon'ble Court be pleased to issue yet another writ of Mandamus commanding upon the respondents to release arrears of salaries of the petitioners w.e.f. March 2000 till date.

   (IV) That the Hon'ble Court be pleased to issue any other writ or writs, order or orders, direction of directions deemed fit in the interest of justice."

2. That the facts in nutshell are that the petitioner No.1 was appointed as Headmistress on 1.7.1980 vide order dated 20.12.1980 (Annexure P/2). The petitioner No.2 was appointed vide order dated 14.7.1981 as Assistant Teacher (Annexure P/3). The petitioner No.3 was appointed as Assistant Teacher vide order dated 2.7.1984 (Annexure P/4) and petitioner No. 4 was appointed as Assistant Teacher vide order dated 1.7.1986 (Annexure P/5) by the Respondent No.5 in Shri Mahaveer Jain Bal Mandir, Durg. The said appointments were approved by the District Education Officer, Durg. Shri Mahaveer Jain Bal Mandir was admittedly getting 100% grants-in-aid from the Government. The erstwhile State of Madhya Pradesh vide notification dated 31.1.2000

290

reduced 100% grants-in-aid by 20% for the academic session 2000-2001 onwards. On 17.5.2000, the Respondent No.5 Society took a decision to close Shri Mahaveer Jain Bal Mandir from the academic session 2000-2001 on account of reduction of grants in aid. The Respondent No.5 accordingly informed to the District Education Officer about closer of the school. The services of the petitioners were terminated vide order dated 31.5.2000 Annexure P/7 and Annexure R-5/2.

3. Being aggrieved, the petitioners filed a writ petition in the High Court of Judicature at Jabalpur being W.P.No. 6069/2000 praying for following reliefs:-

> *(I) that the Hon'ble Court be pleased to issue a writ in the nature of certiorari or mandamus thereby quashing the notice No. 0/2000 dated 31/5/2000 Annexure P 6.*
>
> *(II) That the Hon'ble Court be pleased to issue writ and/or direction in the nature of prohibition, prohibiting the respondents and each of them from giving effect and/or further effect, till disposal of this petition.*
>
> *(III) That the Hon'ble Court be pleased to yet another writ of Mandamus commanding upon the respondents to release arrears of salaries of the petitioners w.e.f. March 2000 till date.*
>
> *(IV) That the Hon'ble Court be pleased to issue any other writ or writs, order or orders, direction or directions deemed fit in the interest of justice."*

4. Pursuant to the Reorganization of the State of Madhya Pradesh, High Court of Chhattisgarh came into existence on 1.11.2000 and the Writ Petition No. 6069/2000 was transferred to this Court. This Court vide order dated 10.11.2000 dismissed the writ petition wherein the same relief was sought, as in the present petition, in the following terms:-

> *"The submissions of the learned counsel for the petitioners are that despite release of the grant by the State Government, the management of the School is not making payment of the salary to*

them and the same institution on one side says that they have closed down but under some different pseudonymous they are still running the institution, therefore, they deserve a direction for payment of the salary to the petitioners. So far as the question regarding payment of the salary is concerned, the petitioners have an alternative remedy available to them under the provisions of the M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983. From the petition, it does not appear that the petitioners have invoked that provision before the District Education Officer. So far as the second part of the argument is concerned, this Court cannot take cognizance of a question relating to the disputed fact. The question whether the same institution is being run in a different or pseudonymous cannot be decided under Article 226 or writ jurisdiction. For that, the petitioners are still free to approach the proper forum.

I find no reason to interfere in the petition. The petition is dismissed."

5. The instant petition was filed on 11.1.2001 for the same reliefs(supra). In the writ petition the petitioners have stated that the petitioners have made a statutory appeal under section 11 of the M.P. Ashaskeey Shikshan Sanstha (Sansthagat Nidhi) Adhiniyam, 1983 to the District Education Officer (Annexure P/9). It is further stated that the petitioners vide letter dated 1.12.2000 (Annexure P/10) had sent a reminder to the District Education Officer. The District Education Officer has failed to decide the appeal of the petitioner in time therefore this writ petition was filed for the same reliefs.

6. Shri Tamaskar, learned counsel for the petitioners submitted that the statutory appeal was confined for non-payment of salaries of the petitioners and no appeal was available against the termination of services of the petitioners. Learned Single Judge of this Court while considering Writ Petition No. 6069/2000 filed by these petitioners claiming same reliefs, had considered all the aspects before dismissing the petition, granting liberty to the petitioners to approach

292

the appropriate forum. It was for the petitioners to approach the proper forum not for the courts to determine and decide which forum would be appropriate.

7. Shri Pritinkar Diwakar, learned Senior counsel with Shri P. R. Patankar, learned counsel, appearing for the Respondents No. 4 and 5, and Shri Pankaj Shrivastava, learned Panel lawyer appearing for the Respondents No. 1 to 3 have vehemently contended that this writ petition is not maintainable as the petitioners have filed W.P. No. 6069/2000 for the same reliefs which has been dismissed by this Court on 10.11.2000. It was contended that the principles of res-judicata will be applicable as this Court has already decided the lis between the parties and the petition was dismissed on merit.

8. After hearing learned counsel for the parties and perusing the papers of this petition as well as the file of W.P.No. 6069/2000, I am of the view that the principles of res-judicata would be attracted in this case. The same question was agitated before this Court in W.P.No. 6069/2000 which terminated into the dismissal of the writ petition with liberty to approach the appropriate forum. This Court cannot sit over or reconsider the same question which has attained finality by earlier order dated 10.11.2000 passed in W.P.No. 6069/2005. It is well settled principle of law that the rule of res-judicata prevents the parties to a judicial determination from litigating the same question again and again even though the determination may be demonstrably wrong. The earlier proceedings have attained finality and the parties are bound by the order passed by this Court while considering the same question seeking the same relief.

9. The Supreme Court in Rajendra Kumar Vs. Kalyan (dead) by Lrs.[1] 2000(8) S.C.C. 99 held that : "The doctrine of res judicata or constructive res judicata predominantly is a principle of equity, good

293

conscience and justice. It would neither be equitable nor fair nor in accordance with the principles of justice that the issue concluded earlier ought to be permitted to be raised later in a different proceeding."

10. In the peculiar facts and circumstances of the case, when this petition was filed on 11.1.2001 and was pending consideration before this Court for about five years, it is desirable in the interest of equity and justice that if any statutory appeal is pending consideration before the authority, the same shall be considered and decided within a period of two months from the date of receipt of the order. In the event, the petitioners have not approached any appropriate forum, the petitioners are granted liberty to approach the appropriate forum within a period of three weeks from today and in that case no limitation shall come in the way of approaching the forum.

11. For the reasons stated above, the petition is dismissed with no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thaku